



Paper No. 23

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OFFICE OF PETITIONS

In re Application of :
Benfey et al. :
Application No. 09/265,585 : DECISION GRANTING PETITION
Filed: 10 March, 2001 :
Attorney Docket No. 5914-066 :

This is a decision on the petition, filed on 6 December, 2001, under 37 CFR 1.10(c), which is treated as a petition to withdraw the holding of abandonment.

The application became abandoned on 13 September, 2001, for failure to timely submit a reply to the Office action requiring restriction mailed on 12 March, 2001, which set a one (1) month shortened statutory period for reply. The filing of the present petition precedes the mailing of a Notice of Abandonment. A reply to the Office action and a five (5) month extension of time, *inter alia*, were received on 13 September, 2001.

Petitioners assert that the reply and five (5) month extension of time were timely filed on 12 September, 2001, via USPS "Express Mail" Service. In support, petitioners have provided a copy of Express Mail Label No. EL501641534US, the same Express Mail number found on the cover sheet accompanying petitioner's reply and the extension of time received on 13 September, 2001.

The Office considers the date the paper or fee is shown to have been deposited as "Express Mail" to be the "Date-In" on the Express Mail label.¹ That is the date that verifies that the package was actually mailed. In view of the above, the evidence is convincing that the reply, including the five (5) month extension of time was deposited as "Express Mail" with the U.S. Postal Service on 12 September, 2001.

¹MPEP 513.

In view of the above the petition under 37 CFR 1.10(c) is granted. The holding of abandonment is withdrawn. No petition fee is due and none has been charged.

The application is being forwarded to Technology Center 1600 for further processing.

Telephone inquiries specific to this matter should be directed to the undersigned at 703 308-6918.



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